

ASSEMBLY BILL

No. 500

Introduced by Assembly Member Solorio

February 15, 2011

An act to amend Sections 1263, 1595, 2113, 2117, 2117.5, 2118, 2118.5, 2122, and 3008 of the Unemployment Insurance Code, relating to unemployment insurance, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 500, as introduced, Solorio. Unemployment Insurance Code: penalties.

Existing law provides the forfeiture of, and ineligibility for, unemployment insurance benefits for certain time periods for any individual convicted in a court of competent jurisdiction of willfully making a false statement or knowingly failing to disclose a material fact to obtain or increase any benefit or payment in violation of specified provisions of state law.

This bill would delete the requirement that the conviction be for a specified violation of state law, and would instead require that the conviction be in a court of competent jurisdiction of this state, any other state, or the federal government.

Existing law prohibits a person from making false statements, representations or concealment to obtain, increase, reduce, or defeat unemployment benefit payments or for the purpose of lowering or avoiding contributions under these provisions. Existing law requires the department to give a person written notice of intent to file a criminal complaint under these provisions not less than 10 days prior to the filing of the criminal complaint.

This bill would delete this notice requirement.

Existing law provides that a violation of specified provisions of the unemployment insurance law and the law requiring the withholding of state income tax on wages is a crime, with specified and differing penalties. Existing law provides that all penalties collected relating to disability insurance are deposited in the Employment Development Department Contingent Fund. Existing law also makes it a crime to conspire to commit a crime, and makes conspiracy punishable by specified fines and imprisonment.

This bill would make various changes regarding the penalties for violations of the unemployment insurance law, the law requiring the withholding of state income tax on wages, and the Unemployment Insurance Code, including increasing specified civil penalties, making certain violations a felony rather than a misdemeanor, and increasing the maximum imprisonment for various violations. The bill would provide that conspiracy to violate the unemployment insurance laws is subject to the same fines and imprisonment as the violation of those laws, rather than the general fines and imprisonment applicable to conspiracy to violate the law. The bill would require the Employment Development Department to deposit repayments under the unemployment insurance provisions into the funds from which the overpayments were made, to deposit penalties for violations of unemployment compensation benefit provisions into the Employment Development Department Benefit Audit Fund, and to deposit penalties for violations of disability compensation benefit provisions into the Unemployment Compensation Disability Fund.

This bill would make an appropriation by providing for the deposit of new and increased penalties into the Unemployment Compensation Disability Fund and the Employment Development Department Benefit Audit Fund, both of which are continuously appropriated funds.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1263 of the Unemployment Insurance
- 2 Code is amended to read:
- 3 1263. (a) Any individual convicted ~~under Section 2101~~ by any
- 4 court of competent jurisdiction *of this state, any other state, or the*
- 5 *federal government*, of willfully making a false statement or
- 6 knowingly failing to disclose a material fact to obtain or increase

1 any benefit or payment under this division shall forfeit any rights
2 to benefits for the week in which the criminal complaint was filed
3 and for the 51 consecutive calendar weeks which immediately
4 follow that week, irrespective of a subsequent order under the
5 provisions of Section 1203.4 of the Penal Code allowing the
6 individual to withdraw his or her plea of guilty and to enter a plea
7 of not guilty, or setting aside the verdict of guilty or dismissing
8 the criminal complaint, but a forfeiture of benefits under this
9 subdivision shall extend no later than the effective date of any
10 order under Section 1203.4 of the Penal Code, and, if the period
11 of forfeiture has not previously expired, the forfeiture of benefits
12 under this subdivision shall terminate as of the effective date of
13 any such order.

14 (b) Any individual convicted ~~under Section 2101~~ by any court
15 of competent jurisdiction *of this state, any other state, or the*
16 *federal government*, of willfully making a false statement or
17 knowingly failing to disclose a material fact to obtain or increase
18 any benefit or payment under this part, Part 3 (commencing with
19 Section 3501), or Part 4 (commencing with Section 4001) shall,
20 irrespective of a subsequent order under the provisions of Section
21 1203.4 of the Penal Code allowing the individual to withdraw his
22 or her plea of guilty and to enter a plea of not guilty, or setting
23 aside the verdict of guilty or dismissing the criminal complaint,
24 be ineligible to receive unemployment compensation or extended
25 duration benefits or federal-state extended benefits for the week
26 in which the criminal complaint was filed, or any subsequent week,
27 for which he or she is first otherwise in all respects eligible for
28 unemployment compensation or extended duration benefits or
29 federal-state extended benefits and for 14 subsequent weeks for
30 which he or she is otherwise in all respects eligible for
31 unemployment compensation or extended duration benefits or
32 federal-state extended benefits. No disqualification under this
33 subdivision shall be applied to any week if all or any portion of
34 the week is beyond the three-year period next succeeding the date
35 of the filing of the criminal complaint.

36 (c) The department shall, effective upon the date of the filing
37 of a criminal complaint against an individual ~~prosecuted under~~
38 ~~Section 2101~~ *for the crimes described in subdivision (a)*, suspend
39 the payment of benefits to the individual.

(d) A plea or verdict of guilty, or a conviction following a plea of nolo contendere, is deemed to be a conviction within the meaning of this section irrespective of whether an order granting probation or other order is made suspending the imposition of the sentence or whether sentence is imposed but execution thereof is suspended.

(e) Notwithstanding the provisions of this section, an individual may during a period of forfeiture under subdivision (a) of this section meet the conditions to remove any disqualification that is imposed under Sections 1260 or 1261, or subdivision (b) of this section, but no week during the period of forfeiture shall be used to offset the amount of any overpayment.

SEC. 2. Section 1595 of the Unemployment Insurance Code is amended to read:

1595. There is in the State Treasury a special fund known as the Employment Development Department Benefit Audit Fund. There shall be deposited in, or transferred to, this fund all sums collected pursuant to Section 1375.1 *and subdivision (d) of Section 2122* and all interest from these sums.

SEC. 3. Section 2113 of the Unemployment Insurance Code is amended to read:

2113. Nothing in this division shall prevent the department from accepting restitution or an acceptable arrangement for restitution, made voluntarily before the department files a criminal complaint under Section 2101 or 2102, for overpayment of benefits from any person, who has not previously claimed any right under this section, who has not been convicted of an offense under Section 2101 or 2102 within three years preceding the service under this section of a written notice of intent to file a criminal complaint and who has willfully made a false statement or representation or knowingly failed to disclose a material fact to obtain or increase any benefit under any provision of this division. ~~The department shall by mail or personal service give the person written notice of intent to file a criminal complaint under Section 2101 or 2102 not less than 10 days prior to the filing of the criminal complaint.~~ The department may accept restitution or an arrangement for restitution and any such acceptance shall be in lieu of any criminal action against the person, except that the department shall not be precluded from filing a criminal action against any person who defaults under an arrangement for

1 restitution which it has accepted. For purposes of this section, no
2 period of time during which an arrangement for restitution is in
3 effect shall be a part of any limitation of the time for commencing
4 a criminal action. The department shall deposit amounts received
5 from any person under this section in the fund from which the
6 overpayments were made.

7 SEC. 4. Section 2117 of the Unemployment Insurance Code
8 is amended to read:

9 2117. Any person who, with or without intent to evade any
10 requirement of this code or any lawful requirement of the
11 department under this code, fails to file any return or report, or to
12 supply any information required by this code or who, with or
13 without like intent, makes, renders, signs, or verifies any false or
14 fraudulent return, report, or statement, or supplies any false or
15 fraudulent information, is liable for a civil penalty of not more
16 than ~~one~~ *twenty-five* thousand dollars ~~(\$1,000)~~ *(\$25,000)*, and is
17 also guilty of a ~~misdemeanor~~ *felony* and shall, upon conviction,
18 be fined an amount not to exceed ~~one~~ *twenty-five* thousand dollars
19 ~~(\$1,000)~~ *(\$25,000)*, or be imprisoned for not more than ~~one year~~
20 *five years*, or both the fine and imprisonment, at the discretion of
21 the court.

22 SEC. 5. Section 2117.5 of the Unemployment Insurance Code
23 is amended to read:

24 2117.5. Any person who, within the time required by this code,
25 willfully fails to file any return or report, or to supply any
26 information with intent to evade any tax imposed by this code, or
27 who, willfully and with like intent, makes, renders, signs, or
28 verifies any false or fraudulent return, report, or statement or
29 supplies any false or fraudulent information, is punishable by
30 imprisonment in the county jail not to exceed ~~one year~~ *five years*,
31 or in the state prison, or by a fine of not more than ~~twenty~~ *fifty*
32 thousand dollars ~~(\$20,000)~~ *(\$50,000)*, or by both the fine and
33 imprisonment, at the discretion of the court.

34 SEC. 6. Section 2118 of the Unemployment Insurance Code
35 is amended to read:

36 2118. Any person or employer who, with or without intent to
37 evade, fails to withhold, pursuant to Section 13020, or fails to pay
38 over any tax withheld, is guilty of a ~~misdemeanor~~ *felony* and,
39 upon conviction, shall be fined an amount not to exceed ~~one~~ *fifty*
40 thousand dollars ~~(\$1,000)~~ *(\$50,000)*, or imprisoned for not more

1 ~~than one year~~ *five years*, or both the fine and imprisonment, at the
2 discretion of the court.

3 SEC. 7. Section 2118.5 of the Unemployment Insurance Code
4 is amended to read:

5 2118.5. Any person required by this code to collect, account
6 for, and pay over any tax or amount required to be withheld who
7 willfully fails to collect or truthfully account for and pay over the
8 tax or amount shall, in addition to other penalties provided by law,
9 be guilty of a felony and, upon conviction thereof, shall be fined
10 an amount not more than ~~twenty~~ *fifty* thousand dollars ~~(\$20,000)~~
11 ~~(\$50,000)~~, or imprisoned in the state prison, or both the fine and
12 imprisonment, at the discretion of the court.

13 SEC. 8. Section 2122 of the Unemployment Insurance Code
14 is amended to read:

15 2122. (a) Except as provided in Sections 2117, 2117.5, 2118,
16 and 2118.5, a violation of this chapter is punishable by
17 imprisonment in the county jail *or in the state prison* not to exceed
18 ~~one year~~ *two years*, ~~or in the state prison~~, or by a fine of not more
19 than ~~twenty~~ *forty* thousand dollars ~~(\$20,000)~~ *(\$40,000)*, or by both
20 the fine and imprisonment, at the discretion of the court.

21 (b) *Notwithstanding the penalties set forth in Section 182 of the*
22 *Penal Code, any person convicted under Section 182 of the Penal*
23 *Code for conspiring to violate this chapter shall be subject to*
24 *penalties and imprisonment as set forth in subdivision (a).*

25 (c) *The department shall deposit amounts received as repayment*
26 *from any person for a violation of this chapter punishable under*
27 *this section into the fund from which the overpayments were made.*

28 (d) *The department shall deposit amounts received as penalties*
29 *for violations of this chapter relating to unemployment*
30 *compensation benefits into the Employment Development*
31 *Department Benefit Audit Fund.*

32 (e) *The department shall deposit amounts received as penalties*
33 *for violations of this chapter related to disability compensation*
34 *benefits into the Unemployment Compensation Disability Fund.*

35 SEC. 9. Section 3008 of the Unemployment Insurance Code
36 is amended to read:

1 3008. All money collected under Section 984 *and subdivision*
2 *(e) of Section 2122* shall be deposited in the *Unemployment*
3 *Compensation* Disability Fund.

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